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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,817	06/27/2006	Gundula Czyzewski	2003P01981WOUS	3957

46726 7590 03/05/2009
BSH HOME APPLIANCES CORPORATION
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EXAMINER

KHAN, AMINA S

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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03/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,817	Applicant(s) CZYZEWSKI ET AL.	
	Examiner AMINA KHAN	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/6/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/6/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 6, 2009 has been entered.

2. Claims 6-14 are pending. Claim 6 has been amended.

3. The 35 USC 112, second paragraph, rejection over claims 6-10 is withdrawn in view of applicant's amendments to the claims.

4. Claims 11-13 stand rejected under 35 USC 102(b) as being anticipated by Barnish et al. (GB 957,944) for the reasons set forth in the previous office action.

5. Claims 6-10 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Barnish et al (GB 957,944) for the reasons set forth in the previous office action.

Claim Rejections - 35 USC § 112

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6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 6-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6 recites the limitation "lasts the same time as the standard temperature value washing process" which is considered new matter. The added limitation in the claim lacks literal basis in the specification as originally filed, see *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983) *aff'd mem.* 738 F.2d 453 (Fed. Cir. 1984). Applicant only has basis for typical washing process as originally filed in the claims.

Claims 7-10 are also rejected for being dependent on claim 6 and inheriting the same deficiency.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 6-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnish et al (GB patent 957,944).

With regards to claims 6, 7, 9, and 10, Barnish et al teaches a method for washing laundry in a process-controlled household washing machine comprising a wash liquid container for receiving laundry and wash liquid intended for washing the laundry (P2/L10, washing tub), wherein a heating device (P1/L31, water heater) and a temperature sensor are attached (P1/L45, thermostat), wherein water for washing is poured into the wash liquid container during a filling phase (P2/L22-25) and the

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temperature sensor delivers signals for the respective temperature of the water or the wash liquid to the process control system (see figure 1, circuit diagram) during the washing phase and said process control system derives commands for controlling the heating device for heating the wash liquid from the temperature signals (P1/L56-62, when water reaches the desired temperature as detected by thermostat, timer is automatically restarted and heater is turned off, see P2/L32-45) and wherein the typical washing process runs at a temperature of the water or the wash liquid at the level of a standard value (P1/L75-76, temperature value to which water is heated) with a heating phase which begins with switching on the device and a post-wash phase without adding further heat energy, and lasts for a defined constant time from the beginning of switching on the heating device until the end of the post-wash phase (P1/L40-44, washing process starts with heater turned on and ends with the start of rinse cycle, see P3/L2-7), wherein:

the temperature of the water or the wash liquid is determined at or after the end of the filling with water (P2/L77-83, water reaches a predetermined level and engages heater, which is controlled by thermostat determining water temperature, see P1/L56-58);

that at a determined temperature of less than a standard value for the amount of water which has freshly run into the wash liquid container before the beginning of the washing process the heating device is switched on; and

that the beginning of the washing process is delayed by a defined time interval ($t_{OK} - t_{OS}$) (P1/L56-58, timer temporarily stopped while water is heated) but from there on lasts the same time as the typical washing process;

- wherein the temperature is first determined during the filling with water or wash liquid (P2/L77-83, water reaches a predetermined level and engages heater, which is controlled by thermostat determining water temperature, see P1/L56-58) and before or during switching off the heating device (P1/L56-62, when water reaches the desired temperature as detected by thermostat, timer is automatically restarted and heater is turned off); (claim 7)

- wherein the time interval ($t_{OK} - t_{OS}$) is defined by reaching the standard value (P1/L56-58, timer temporarily stopped while water is heated, when water reaches the desired temperature as detected by thermostat, timer is automatically restarted and heater is turned off, see P1/L56-62, this would constitute a time interval); (claim 9)

- wherein the time interval ($t_{OK} - t_{OS}$) has a pre-defined length (P1/L40-44). (claim 10)

Barnish et al teaches a method for washing laundry in a washing machine comprising a process control system (see figure 1, circuit diagram) for controlling operation of the washing machine, a wash liquid container for receiving laundry and water (P2/L10, washing tub), a heating device for heating the water within the wash liquid container (P1/L31, water heater), and a temperature sensor for detecting the temperature of the water (P1/L45, thermostat), the method comprising the acts of:

providing wash liquid to the wash liquid container during a during a filling phase (P2/L22-25);

detecting an initial temperature of the water with the temperature sensor (P2/L77-83, water reaches a predetermined level and engages heater, which is controlled by thermostat determining water temperature, see P1/L56-58);

activating the heating device to heat the water during a heating phase (P2/L77-83, water reaches a predetermined level and engages heater, which is controlled by thermostat determining water temperature, see P1/L56-58);

performing a delay phase if the temperature of the water is below a pre-determined standard value (P1/L56-58, timer temporarily stopped while water is heated), the delay phase continuing until the temperature of the water reaches the standard value (P3/L17-32, when set on "high" temperature, delay continues until water reaches "medium" temperature, as detected by thermostat, and motor is started);

performing a washing phase and continuing the wash phase for a pre-determined period of time (P3/29-32, in the "high" setting, water or washing liquid is heated for a definite time after reaching "medium" temperature);

turning off the heating device when the temperature of the water reaches a pre-determined washing temperature (P3/L48-52);

- wherein the duration of the washing phase has a pre-defined length (P3/29-32, in the "high" setting, water or washing liquid is heated for a definite time after reaching "medium" temperature); (claim 12)

- wherein the duration of the delay phase is variable in response to the period of time required for the temperature of the water to reach the standard value (P1/L56-58, timer temporarily stopped while water is heated, when water reaches the desired temperature as detected by thermostat, timer is automatically restarted and heater is turned off, see P1/L56-62. Since the time it takes to heat a certain amount of water or wash liquid depends on its specific heat, quantity, and initial temperature, time required to heat water or wash liquid will inherently vary assuming thermal power output of water heater is not adjustable). (claim 13)

With regards to claims 6, 8 and 14, Barnish et al does not teach the method wherein the standard value lies in the range of 10 °C to 15.

Since the instant specification is silent to unexpected results, the standard value is not considered to confer patentability to the claim. As energy conserved is a variable that can be modified by adjusting the standard value, the standard value would have been considered a result effective variable by one having ordinary skill in the art at the time the invention was made. As such, without showing unexpected results, the claimed standard value cannot be considered critical. Accordingly, one of ordinary skill in the art at the time the invention was made would have optimized, by routine experimentation, the standard value such that the time required for heating could be minimized and, thereby, energy can be conserved (*In re Boesch*, 617 F.2d. 272, 205 USPQ 215 (CCPA 1980)), since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (*In re Aller*, 105 USPQ 223).

Regarding claim 6, the “low” wash and “medium” wash cycles differ by 2 minutes in their duration. This difference is considered close enough that it would be expected to encompass similar washing results. A *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium MetalsCorp. of America v. Banner*, 778F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I.

Response to Arguments

12. Applicant's arguments filed regarding Barnish et al. have been fully considered but they are not persuasive. The applicant argues that the difference in the time of the “low” wash cycle of 16 minutes and the “medium” wash cycle of 16 minutes is not the same. The examiner argues that the 2 minute difference in times of the wash cycles is close enough that the washed articles would be expected to have similar levels of cleanliness. Applicants have not demonstrated the criticality of the identical time intervals of the two cycles. Furthermore, the pre-wash or “low” wash cycle has two minutes attached to the end of the 14 minute cycle (see page 2, lines 103-108). Claims 11-13 recited nothing regarding the equivalent time intervals of the two cycles. Therefore the rejections are maintained.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5s off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796

/Amina Khan/
Examiner, Art Unit 1796
February 28, 2009